
(2018) 08 GAU CK 0003
In the Gauhati High Court
Case No : WA 355 of 2017

Sri Sekhar Kanti Sarkar

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

Date of Decision : 03-08-2018

Acts Referred:

Assam Services (Discipline & Appeal) Rules, 1964 — Rule 9(9)

Citation : (2018) 08 GAU CK 0003

Hon'ble Judges : AJIT SINGH, CJ;MANOJIT BHUYAN, J

Bench : Division Bench

Advocate : N. Nath, A. Saikia, D. Deka, RKD Choudhury, M. Katakya

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.

1. The appellant/writ petitioner Sekhar Kanti Sarkar was appointed as Sub-Inspector of Police (Wireless Technicians) [in short SI(WT)] in Assam

Police Radio Organization (APRO) on 5.12.2001. As per the terms and conditions of appointment and to qualify himself as SI(WT), he was required

to undergo, amongst other mandatory trainings, to successfully complete and pass the Grade-III and Grade-II Police Wireless Technician Trade

Courses (PWT) of 9 and 6 months duration respectively. For the period from 2006 to 2013 the appellant was called on seven occasions to undergo the

Grade-III PWT Training Course at the APRO Training School at Jalukbari, Guwahati. On one pretext or the other, the appellant kept himself away

from undergoing the mandatory training course. This eventually prompted the respondent authority to issue show-cause-notice dated 15.5.2014,

together with the Statement of Allegations. He was asked to explain as to why he should not be punished for his gross unbecoming conduct whereby

he had exhibited insubordination and disobedience to the lawful order of the superior authority.

The appellant made reply on 10.7.2014 and thereafter disciplinary proceeding was initiated by appointing Inquiry Officer. Despite being summoned on

various dates, the appellant did not participate in the departmental proceedings, save and except, sending a letter on 10.6.2015 together with certain

documents. The Inquiry Officer submitted report on 10.7.2015 holding that the charges against the appellant stood proved. On the basis of the Enquiry

Report, the disciplinary authority issued notice dated 30.4.2016 by recording agreement with the findings of the Inquiry Officer and provisionally

deciding to award the punishment of dismissal from service. On this, the appellant was asked to show-cause against the proposed action and in case

any representation is made, the same be done within 10 days from the date of receipt of the notice. Along with the said notice dated 30.4.2016, a copy

of the Enquiry Report was also enclosed. For the records, the said notice was received by the appellant on 13.5.2016. No representation was made

except for a letter dated 22.5.2016 asking for 15 daysâ?? time to submit reply. On 30.5.2016, the appellant was dismissed from service with

immediate effect. Aggrieved, the appellant instituted the related writ petition i.e. WP(C) 3561/2016.

2. Four grounds of challenge were urged before the learned Single Judge â?? firstly, the finding of unauthorized absence by the Inquiry Officer was

misconceived and not sustainable as there was no such charge drawn up against the appellant; secondly the disciplinary proceeding was drawn up

prior to disposal of his representation where he had requested for relaxation and change/conversion from the trade/grade of Wireless Technician to

the Operating trade; thirdly, in the absence of any mention made to the written statement of defence, the findings of the Inquiry Officer was wholly

perverse and; fourthly, that there was clear violation of sub-rule (9) of Rule 9 of the Assam Services (Discipline & Appeal) Rules, 1964, whereby the

disciplinary authority is required to consider the record of the inquiry and record its findings on each charge. The appellant had also urged that since a

copy of the Enquiry Report was not given to him prior to issuance of the notice dated 30.4.2016 relating to proposed penalty and action, the same was

a denial of reasonable opportunity of hearing before the disciplinary authority made up his mind to dismiss the appellant from service. Each of the

grounds of challenge were answered having regard to the facts and the legal propositions so advanced and discussed. On the question of non-supply of the Enquiry Report prior to issuance of the second show-cause-notice, the learned Single Judge held that such action, ipso facto, cannot be held to be unlawful or void unless it could be shown that nonobservance thereof had prejudicially affected the person concerned. In the absence of any merit in the writ petition, the same was dismissed.

3. In the present appeal the issue raised for consideration is as to whether non-furnishing of a copy of the Enquiry Report before the disciplinary

authority had accepted the finding of guilt recorded in the Enquiry Report dated 10.7.2015 constituted breach of natural justice and whether any

prejudice had been caused to the appellant. On this, two facts emerging from the records are that in the show-cause-notice dated 30.4.2016 it is

recorded that the report of the Inquiry Officer had been carefully examined and that the disciplinary authority agrees to the findings of the Inquiry

Officer. While provisionally deciding to award the penalty of dismissal from service, the appellant was also asked to make representation, if any.

Secondly, a copy of the Enquiry Report was also enclosed therewith, receipt of which is not disputed by the appellant. The agreement recorded in the

said notice dated 30.4.2016 with the findings of the Inquiry Officer is now urged before us as an emphatic finding by the disciplinary authority with

regard to the guilt of the appellant before any opportunity having been afforded to make representation against the findings of Inquiry Officer. This

denial, according to the appellant, goes to the root of the matter, thereby, vitiating the order of punishment.

4. As observed above, there is no dispute to the receipt of the Enquiry Report by the appellant. Grievance raised is only with regard to non-supply of

the same before issuance of the second show-cause-notice dated 30.4.2016. To answer the issue so raised, we may usefully take note of the law laid

down by the Supreme Court in a catena of decision as regards the effect of non-supply of Enquiry Report of the Inquiry Officer to the delinquent. In

Union of India vs Mohd. Ramzan Khan, reported in (1991) 1 SCC 588, the Supreme Court held that principle of natural justice and fair play obligated

the disciplinary authority to supply adverse material to the delinquent who was likely to be affected by such material. It was held that non-supply of

report of the Inquiry Officer to the delinquent would constitute infringement of the principles of natural justice.

The Constitution Bench of the Supreme Court in *Managing Director, ECIL vs. B. Karunakar*, reported in AIR 1994 SC 1074, reiterated that the

delinquent employee has a right to receive the report of the Inquiry Officer and a denial thereof would constitute breach of natural justice. However,

from the ratio laid down in *B. Karunakar (supra)* it stands clear that although non-supply of report would violate the doctrine of natural justice, the

failure to supply a report to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of

punishment as non-est and ineffective. It was held that an order of punishment cannot automatically be set aside unless the delinquent employee can

plead and prove to the satisfaction of the Court that non-supply of such Enquiry Report had caused prejudice and resulted in miscarriage of justice.

5. In *Haryana Financial Corporation and Another vs. Kailash Chandra Ahuja*, reported in (2008) 9 SCC 31, the Supreme Court, on an exposition of the

various Supreme Court decisions, including the Constitution Bench judgment in *B. Karunakar (supra)*, on the issue of non-furnishing of Enquiry Report

and the requirement of establishing the element of prejudice, was confronted with an issue where the disciplinary authority did not furnish a copy of

the Enquiry Report before recording a finding that he had accepted the finding of guilt recorded by the Inquiry Officer in the Enquiry Report. The

High Court of Punjab & Haryana had set aside the order of dismissal dated 4.4.2002 primarily on the ground that although there being no whisper in

the writ petition showing any prejudice caused to the delinquent, it was observed that due to the non-supply itself, prejudice is â??writ largeâ??.

Before the Supreme Court, the decision of the High Court was held to be incorrect as the observation was virtually by ignoring the ratio laid down in

B. Karunakar (supra), which lays down that prejudice should be shown by the delinquent. On consideration of the various decisions the Supreme

Court held that though supply of the report of the Inquiry Officer is integral to natural justice, failure to do so would not automatically result in quashing

the order. The order of punishment can be held to be vitiated if the delinquent employee can show that non-supply of report resulted in prejudice or

miscarriage of justice. And whether prejudice have been caused to the delinquent employee the same depends upon the facts and circumstances of

each case and no rule of universal application can be laid down.

6. In a recent judgment of the Supreme Court in Uttarakhand Transport Corporation vs. Sukhveer Singh, reported in 2017 (13) Scale 365, a similar issue as in the present case was considered. In the said case, the Inquiry Officer found the charges against the delinquent as proved, whereafter the disciplinary authority issued show-cause-notice along with which the Enquiry Report was supplied. The Supreme Court held that although it was necessary for the disciplinary authority to have supplied the report of the Inquiry Officer before issuance of the show-cause-notice proposing penalty, however, in the fact situation of the case, the Court found no reason to hold that the delinquent was prejudiced by supply of the Inquiry Officer's report along with the show-cause-notice. Relying on B. Karunakar (supra) and Kailash Chandra Ahuja (supra), the Supreme Court held that it is for the delinquent employee to plead and prove that non-supply of report had caused prejudice and resulted in miscarriage of justice. Further, if he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.

7. We have heard learned counsels of the parties and have given our anxious consideration on the materials on record. Following the law laid down in B. Karunakar and Kailash Chandra Ahuja, the adjudication of the present appeal have substantially narrowed down i.e. to the existence of any pleadings on prejudice and derivation of satisfaction by the Court with regard to any pleadings on prejudice. We find that at the very first place there are no pleadings whatsoever regarding any prejudice that have been caused to the appellant by the non-supply of the Enquiry Report prior to the issuance of the show-cause-notice dated 30.4.2016. The appellant did not even make any effective representation to the said notice dated 30.4.2016. The submission made by the counsel representing the appellant that prejudice, in the facts and circumstances of the case, is writ large, we are afraid that such contention cannot be accepted. To reiterate, prejudice has to be pleaded and proved, which is wholly absent in the present case. The appellant himself admits to the absence of any pleadings on prejudice.

8. For the foregoing reasons, we find no merit in the present appeal. Accordingly the same stands dismissed, however, without any order as to cost.